

BAY STATE HYDROPOWER ASSOCIATION

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Department of Energy Resources
100 Cambridge Street
Boston, MA 02114

**RE: Request for Comments on the Renewable Portfolio Standard Class II under
MGL Chapter 25A, Section 11F**

Dear Sir/Madam:

The Bay State Hydropower Association ("BSHA") thanks the Department of Energy Resources (the "Department") for the opportunity to submit comments on the Renewable Portfolio Standard ("RPS") of the Green Communicates Act (the "Act"). As you are aware, the BSHA comprises over 90% of the owners of hydro facilities in Massachusetts with over 90% of the capacity of hydropower in the Commonwealth.

Members of the Bay State Hydropower Association provide renewable and non-CO emissions energy to the citizens of the Commonwealth of Massachusetts. The Association's members will be an integral part of achieving Commonwealth's goal of attaining 15% of energy supply from renewable resources by 2020. Members of the BSHA provide green investments and jobs in Massachusetts.

The operation of the RPS is very important to the members because it will provide for maintenance of existing facilities of a certain size and the development of more power either from new facilities or improvements to existing facilities.

Following are the Association's comments on Class II from the Department's inquiry and comment notices.

Class II Comments

Alternative Compliance Payment

Class II of the RPS is very important to the small hydropower facility owners in the Commonwealth. Without some form of a REC payment, these small facilities will continue to

be under pressure to cease production. Because of the importance of such REC production from small hydro, a compliance payment rate specifically for such hydropower facilities should be adopted. The Act contemplates such a thing and provides the Department with the authority to adopt such regulations. The alternative compliance payment should be as low as possible but sufficient to keep the market place vibrant and viable. (should there be a \$\$ amount here???)

Supplier Percentage

The Department has the discretion to calculate the amount that every retail supplier provides to end-use customers in the Commonwealth from Class II as set forth in Section 11F (e) of SECTION 32 of Chapter 169 -by specific technology. The Department should determine the percentage individually and specifically for hydropower RECs in Class II by using the total amount of MWh from 5 MW hydro facilities or smaller pre-1997 divided by the total amount of all electricity used in the test year. This will equal the percentage of Class II RECs for the RPS from hydropower. This creates a percentage sufficient to provide the REC demand from suppliers to sustain those smaller hydropower facilities and ensure that existing renewable energy supply from such hydropower facilities continues, and that the state does not backslide on its energy production goals from renewable technologies. This specific percentage should be used for hydropower only.

The legislative goal is to maintain existing hydro facilities and output because such facilities are a significant portion of generation in New England. Hydropower should be treated in a specific fashion because it is a proven technology from a domestic source and it is environmentally clean - (no CO2 emissions).

Criteria for Class II

Class II hydro RECs are required to satisfy the environmental provisions in the Act. As described in the comments to Class I in this area, the Department should adopt the same criteria for the same reasons. State and federal environmental regulatory programs have existed for decades and met on a site specific basis for hydropower facilities. The regulatory structure has the exact effect of complying with the statutory provisions of the Act in this area.

As set forth in 314 CMR 3.01, the "Purpose and Authority" of the Surface Water Discharge Permit Program was promulgated by the Department of Environmental Protection pursuant to the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53, and the Federal Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the National Pollutant Discharge Elimination System Permit Regulations at 40 CFR Part 122. The purpose of 314 CMR 3.00 is to implement the provisions of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53, and the Federal Clean Water Act, 33 U.S.C. 1251 *et seq.*, as applied to surface water discharges, and to ensure that 314 CMR 3.00 confer sufficient authority on the Department to assume delegation from the EPA to administer the NPDES permit program within the Commonwealth. 314 CMR 3.06 also confers authority on the Department to issue general permits for surface water discharges, including general permits for storm water discharges from small municipal separate sewer systems regulated under EPA's Phase II Storm.

The criteria for determining eligibility for site specific hydropower facilities has also been set forth in 401(a)(1) of the Clean Water Act administered by the Federal Energy Regulatory Commission ("FERC") as well as in 314 CMR 4.00 (Surface Water Quality Standards) and that these standards are extremely detailed, stringent and "site specific" as required by Section 11F (c) of SECTION 32 of Chapter 169 of the Acts of 2008 (see attached Exhibit A and Exhibit B). If these federal and state standards have been met, a hydropower facility located in Massachusetts should be allowed to participate in the RPS market without further scrutiny. Similar regulatory systems are in place in other states or under the auspices of EPA and FERC, and such programs exist in other countries sufficient to satisfy the statutory environmental obligations of the Act.

In its final analysis, the Department should reference these existing environmental and site specific programs and facility certification as sufficient to satisfy the provisions of the Act.

Thank you again for the opportunity to provide these comments. If you have any questions, please contact me or our counsel, James Smith, Esq. or Nancy Farias, Esq., at 617-523-0600.

Respectfully submitted,
/s/

Thomas Tarpey
President